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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ALLEN MCQUARY,

Defendant and Appellant.

E067215

(Super.Ct.No. SWF006085)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Andrea S. Bitar, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Eric A. Swenson and Jennifer B. Truong, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Christopher Allen McQuary, filed a petition pursuant to Penal Code section 1170.18,<sup>1</sup> which the court denied. On appeal, defendant contends the court erred in denying his petition. We affirm.

## I. PROCEDURAL HISTORY

On October 30, 2003, the People charged defendant by felony complaint with check forgery in the amount of \$1,476.58 (count 1; § 470, subd. (d)) and burglary (count 2; § 459). The People additionally alleged defendant had suffered a prior prison term. (§ 667.5, subd. (b).) On June 7, 2004, defendant pled guilty to the count 1 offense.<sup>2</sup> As provided in the plea agreement, the court sentenced defendant to 16 months of imprisonment and dismissed the remaining count and allegation.

On May 18, 2016, defendant filed a petition for reduction of the felony forgery offense to a misdemeanor. Defendant checked a box on the section 1170.18 form reflecting that he believed “the value of the check or property [did] not exceed \$950.” The People asserted in their response dated June 2, 2016, that defendant was not entitled to a sentence reduction because the alleged value of the check defendant pled guilty to forging was \$1,476.58, as reflected in the complaint. On June 16, 2016, the court denied the petition, indicating that the amount exceeded \$950.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Defendant simultaneously pled guilty to burglary in a second case and admitted a violation of probation in a third case.

## II. DISCUSSION

Defendant contends the court erred in determining the value of the check was more than \$950 because the value of a check cannot be determined by its face value alone. Defendant maintains that by compelling him to bear the burden of proving the value of the check was \$950 or less, he was deprived of due process. Defendant further argues that the rule of lenity should have been applied in the instant case. Thus, defendant asserts that the matter must be reversed or remanded for an evidentiary hearing. We disagree.

““On November 4, 2014, the voters enacted Proposition 47, “the Safe Neighborhoods and Schools Act” (hereafter Proposition 47), which went into effect the next day. [Citation.]’ [Citation.] Section 1170.18 ‘was enacted as part of Proposition 47.’ [Citation.]” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 649, fn. 2.) Section 1170.18, subdivision (f), provides a mechanism by which a person who has completed his sentence for a felony offense may petition for reclassification of the offense as a misdemeanor in accordance with the offense statutes as added or amended by Proposition 47.

The petitioner bears the burden of proof to show eligibility for reclassification under section 1170.18. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 880; accord, *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449.) This includes, in cases of

forgery, that the value of the forged item did not exceed \$950. (*People v. Salmorin* (2016) 1 Cal.App.5th 738, 745 [“[F]or purposes of resentencing under Proposition 47, the value of a forged check is the face value of the check.”]; accord, *People v. Gonzales* (2016) 6 Cal.App.5th 1067, 1071, review granted Feb. 15, 2017, S240044 [blank checks do not have any value]; accord, *People v. Franco* (2016) 245 Cal.App.4th 679, review granted June 15, 2016, S233973 [whether a forged check has sufficient “value” for felony sentencing is determined based on the check’s face value];<sup>3</sup> cf. *People v. Lowery* (2017) 8 Cal.App.5th 533, review granted Apr. 19, 2017, S240615 [value of forged check is not necessarily its face value, but must include a determination of its fair market value, i.e., the likelihood it would be cashed]; see *People v. Romanowski* (2017) 2 Cal.5th 903, 906, 915, 917 [value of stolen access cards is determined by reasonable and fair market value of cards on black market].)

Here, defendant failed to meet his burden of proving that the value of the check he pled guilty to forging was \$950 or less. Indeed, defendant pled guilty to forging a check valued at \$1,476.58, which rendered him categorically ineligible for reduction of his sentence pursuant to section 1170.18. Even if we assume for the sake of argument that

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<sup>3</sup> The issue currently before the California Supreme Court, as reflected on the docket in *Franco*, is as follows: “For the purpose of the distinction between felony and misdemeanor forgery, is the value of an uncashed forged check the face value (or stated value) of the check or only the intrinsic value of the paper it is printed on?” <[http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc\\_id=2139221&doc\\_no=S233973](http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2139221&doc_no=S233973)>(as of Nov. 20, 2017).

defendant merely pled guilty to forging a check of indeterminate value, defendant still failed to prove that it was not worth more than \$950. Requiring that defendant prove the value of the check he was convicted of forging does not improperly shift the burden of proof to defendant or deny him due process; this is because the People already met their burden when defendant pled guilty. It is defendant who is requesting relief here and who, thus, properly bears the burden of proof.

Moreover, even assuming *arguendo* that the People bore the burden of proving the value of the check was not more than \$950, several courts, as cited above, have already determined that the value of a forged check is its face value. Here, the face value of the check, according to the complaint, was \$1,476.58. Furthermore, defendant's reliance on the rule of lenity does not convince us to alter our conclusion. "'The rule [of lenity] applies only if the court can do no more than guess what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule.' [Citation.]" (*People v. Avery* (2002) 27 Cal.4th 49, 58.) We find no ambiguity in the language of section 1170.18 with respect to who carries the burden of proof or how the value of a forged instrument may be determined. Thus, the court properly denied defendant's petition.

### III. DISPOSITION

The judgment is affirmed without prejudice to subsequent consideration of a properly filed petition.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.